

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL ADJUSTMENT ADMINISTRATION  
Washington, D. C.

April 10, 1939.

TO MEMBERS OF AGRICULTURAL CONSERVATION COMMITTEES  
COTTON COUNTIES - NORTH CENTRAL REGION:

It has been reported to this Division that in a few cases producers, ginnerers, buyers, or others have failed or refused to pay or remit to the treasurer of the county committee the amount of the penalty incurred or have failed or refused to keep or make the records and reports required of them or have kept or made a false record or report in an attempt to evade the effect of the cotton marketing quota provisions of the Agricultural Adjustment Act of 1938. Although the number of specific violations reported to this Division is very inconsiderable, compared with the total number of producers and others subject to those provisions, it is believed that a summary of the pertinent provisions of the Act and of the regulations issued thereunder and of the procedure applicable to certain types of cases may be helpful in concluding cases which have arisen in the administration of the cotton marketing quota provisions for the 1938-1939 marketing year and preventing other cases coming up.

The Agricultural Adjustment Act of 1938 (hereinafter referred to as the Act) contains the following provisions:

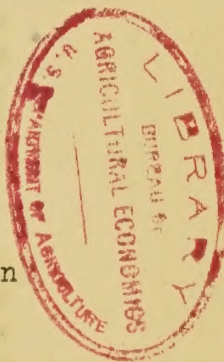
"Sec. 372. (a) The penalty with respect to the marketing, by sale, of wheat, cotton, or rice, if the sale is to any person within the United States, shall be collected by the buyer.

"(b) All penalties provided for in Subtitle B shall be collected and paid in such manner, at such times, and under such conditions as the Secretary [of Agriculture] may by regulations prescribe. Such penalties shall be remitted to the Secretary by the person liable for the penalty, except that if any other person is liable for the collection of the penalty, such other person shall remit the penalty. The amount of such penalties shall be covered into the general fund of the Treasury of the United States.

"(c) Whenever, pursuant to a claim filed with the Secretary within one year after payment to him of any penalty collected from any person pursuant to this Act, the Secretary finds that such penalty was erroneously, illegally, or wrongfully collected, the Secretary shall certify to the Secretary of the Treasury for payment to the claimant, in accordance with regulations prescribed by the Secretary of the Treasury, such amount as the Secretary finds the claimant is entitled to receive as a refund of such penalty.

"The Secretary is authorized to prescribe regulations governing the filing of such claims and the determination of such refunds."

[Subsection (d) omitted.]



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"Sec. 373. (a) This subsection shall apply to warehousemen, processors, and common carriers of corn, wheat, cotton, rice, or tobacco, and all ginnerers of cotton, all persons engaged in the business of purchasing corn, wheat, cotton, rice, or tobacco from producers, and all persons engaged in the business of redrying, prizing, or stemming tobacco for producers. Any such person shall, from time to time on request of the Secretary [of Agriculture], report to the Secretary such information and keep such records as the Secretary finds to be necessary to enable him to carry out the provisions of this title. Such information shall be reported and such records shall be kept in accordance with forms which the Secretary shall prescribe. For the purpose of ascertaining the correctness of any report made or record kept, or of obtaining information required to be furnished in any report, but not so furnished, the Secretary is hereby authorized to examine such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as he has reason to believe are relevant and are within the control of such person. Any such person failing to make any report or keep any record as required by this subsection or making any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than \$500.

"(b) Farmers engaged in the production of corn, wheat, cotton, rice, or tobacco for market shall furnish such proof of their acreage, yield, storage, and marketing of the commodity in the form of records, marketing cards, reports, storage under seal, or otherwise as the Secretary may prescribe as necessary for the administration of this title.

"(c) All data reported to or acquired by the Secretary pursuant to this section shall be kept confidential by all officers and employees of the Department, and only such data so reported or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing under this title."

"Sec. 374. The Secretary [of Agriculture] shall provide, through the county and local committees, for measuring farms on which corn, wheat, cotton, or rice is produced and for ascertaining whether the acreage planted for any year to any such commodity is in excess of the farm acreage allotment for such commodity for the farm under this title. If in the case of any farm the acreage planted to any such commodity on the farm is in excess of the farm acreage allotment for such commodity for the farm, the committee shall file with the State committee a written report stating the total acreage on the farm in cultivation and the acreage planted to such commodity."

"Sec. 375. (a) The Secretary [of Agriculture] shall provide by regulations for the identification, wherever necessary, of corn, wheat, cotton, rice, or tobacco so as to afford aid in discovering and identifying such amounts of the commodities as are subject to and such amounts thereof as are not subject to marketing restrictions in effect under this title.

"(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this title."



"Sec. 376. The several district courts of the United States are hereby vested with jurisdiction specifically to enforce the provisions of this title. If and when the Secretary [of Agriculture] shall so request, it shall be the duty of the several district attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this title. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law."

The regulations pertaining to cotton marketing quotas for the 1938-1939 marketing year (Cotton 207), hereinafter referred to as the regulations, in addition to the provisions relating to the manner in which penalties are to be collected and paid and records are to be kept and reports are to be made, contain the following provisions:

"Sec. 512. Court Proceedings to Collect Penalties.-- It shall be the duty of the county committee to report in writing to the State committee forthwith each case of failure or refusal to pay the penalty or to remit the same to the Secretary of Agriculture when collected. It shall be the duty of the State committee to report each such case forthwith in writing in triplicate to the United States Department of Agriculture with a view to the institution of proceedings by the United States Attorney for the appropriate district, under the direction of the Attorney General of the United States, to collect the penalties, as provided for in section 376 of the Act."

"Sec. 606. Enforcement.-- It shall be the duty of the county committee to report in writing to the State committee forthwith each case of failure or refusal to make any report or keep any record as required by these regulations and each case of making any false report or record. It shall be the duty of the State committee to report each such case forthwith in writing in triplicate to the United States Department of Agriculture with a view to the institution of proceedings by the United States Attorney for the appropriate district, under the direction of the Attorney General of the United States, to enforce the provisions of Title III of the Act."

Certain types of cases involving the application of the provisions of law and regulations referred to above are set forth below with a discussion of the action which should be taken by the county committee and by the State committee.

1. Ginners failing or refusing to make a report on form Cotton 216 or to correct a report made on form Cotton 216.

The county committee should forward by registered mail (return receipt requested) to the ginner a copy of the following: (1) the Act, as amended, or copies of the pertinent sections thereof; (2) the regulations; (3) "Ginner's Record and Report" (Cotton 216). This material should be accompanied by a letter from the county committee pointing out to the ginner that the instructions relative to the proper execution



of form Cotton 216 are printed on the reverse side thereof and directing his attention particularly to sections 373 (a) and 376 of the Act and section 601 of the regulations. The letter should inquire as to whether the ginner understands the method of executing form Cotton 216 and offer to him any assistance which may be required in this connection. The letter should also request a prompt reply from the ginner.

If no reply from the ginner is received or if his reply indicates a lack of conformance with the Act and regulations, the county committee, or a member thereof, should call at the ginner's place of business and endeavor to discuss with him the reasons he may have for not making the reports and again call to his attention the above-mentioned provisions of the Act and regulations and explain that if the reports are not made the committee is under a duty to report the case for proceedings under section 376 of the Act.

If the ginner will not make the reports after the matter has been so discussed with him, a report in triplicate should be prepared and the original and one copy thereof transmitted to the State committee. The report as forwarded to the State committee should set forth each fact in connection with the failure or refusal to submit the reports, the name and address of the gin and the name and address of the operator of the gin, and show whether such operator is an individual, partnership, corporation, etc., and should be accompanied by a copy of all correspondence between the county committee and the ginner and all statements obtained by the committee from the ginner in connection therewith.

2. Buyers failing or refusing to require cotton to be identified by marketing cards or to collect a penalty or to remit to the treasurer of the county committee any penalty collected.

The buyer should be requested to make a report on form Cotton 220 to the county committee on all cotton purchased by him during the marketing year. The county committee must make the request for the execution of form Cotton 220 strictly in accordance with section 602 (b) of the regulations.

In order that the buyer may be informed of the facts reported on which the request to submit form Cotton 220 is predicated, the letter containing the request should set forth each instance wherein the committee has reason to believe that the conduct of the buyer contravened the provisions of the Act and regulations and the amount of any penalty which the buyer under the circumstances was required to collect and remit to the treasurer of the county committee. The letter should also contain a citation to the applicable sections of the Act and regulations, and a copy of the Act, or a copy of the pertinent sections thereof, and of the regulations should accompany the letter.

If the buyer has purchased cotton from a producer without requiring the producer to identify the cotton by the use of marketing cards, the attention of the buyer should be directed to sections 408 and 602 of the regulations and sections 372, 373, and 375 of the Act. It should be pointed out to him that section 408 (a) of the regulations provides that the buyer shall, unless the cotton purchased is identified by the producer by the use of cotton marketing cards, deem the cotton to be subject to the penalty pro-



vided for in section 348 of the Act which, under section 372 (a) of the Act, shall be collected by the buyer and remitted to the Secretary of Agriculture in accordance with the regulations prescribed under section 372 (b) of the Act. The buyer should be referred to sections 505 and 506 of the regulations, wherein it is provided that the penalty shall be due at the time the cotton is marketed and that the penalty shall be remitted to the treasurer of the county committee not later than thirty calendar days next succeeding the day on which the cotton was marketed by the producer.

If the buyer purchased cotton from a producer which was identified to him by the use of marketing cards as being subject to the penalty and the penalty was not collected by the buyer, the attention of the buyer should be directed to sections 408 and 602 of the regulations and sections 372 and 373 of the Act. It should be pointed out to him that section 372 of the Act requires the buyer to collect the penalty incurred with respect to the marketing of cotton by sale and that the amount of the penalty incurred, pursuant to sections 505 and 506 of the regulations, became due at the time the cotton was marketed and was required to be remitted by him to the treasurer of the county committee not later than thirty calendar days next succeeding the day on which the cotton was marketed by the producer.

If the buyer collected a penalty from a producer and failed or refused to remit the penalty to the treasurer of the county committee, the attention of the buyer should be directed to sections 505, 506, and 602 of the regulations and sections 372 and 373 of the Act. The buyer should be further advised that, when he collects the penalty, the amount collected must be remitted to the treasurer of the county committee within the period specified in section 506 of the regulations and that any action to the contrary is against the specific provisions of the law and regulations and constitutes an unlawful detention and use of the funds collected.

In addition to the foregoing suggestions, the buyer in each case should be advised that, pursuant to sections 512 and 606 of the regulations, the county committee is under a duty to report any case where the buyer is actually in default in order that proceedings under section 376 of the Act may be instituted to enforce specifically the provisions of the Act. The county committee or one of its members should endeavor to confer personally with the buyer.

If form Cotton 220 is not received within fifteen calendar days after the request therefor is forwarded to the buyer by registered mail, or if form Cotton 220 is received and the penalties are not remitted by him, or if he continues in default in both respects, a report in triplicate should be prepared and the original and one copy thereof transmitted to the State committee. The report should show the name and full mail address of the buyer and of each producer from whom, according to the information of the county committee, the buyer purchased cotton and failed or refused to conform to the Act and the regulations in purchasing the cotton. The report should also show a full and particular description (in addition to the farm serial number) of the farm on which the cotton was produced, the date on which the cotton was purchased and the place at which the transaction occurred, the amount of the penalty incurred and the amount thereof which was or was not collected. In addition, copies of all correspondence from the county com-



mittee to the buyer and the producers, and replies thereto and any statements made by the buyer and the producers should accompany the report.

In the event the form Cotton 220 submitted by the buyer indicates that a penalty was incurred with respect to the marketing of any cotton purchased by the buyer which was not collected and remitted by him to the treasurer of the county committee, the buyer should be so notified and requested to remit the amount thereof without further delay to the treasurer of the county committee. Where the form Cotton 220 indicates that cotton produced in any other county was purchased by the buyer, the county committee for each such other county should be notified in writing so that it may be determined whether the buyer is in default with respect to the remittance of penalties to its treasurer.

While the county committee is attempting to enforce the provisions of the Act and regulations in the manner indicated above, no check for any payment under any program or law which may be or become due to any producer from whom the buyer should have collected the penalty should be delivered to the producer until the provisions of the Act and the regulations are satisfied.

However, where the buyer has collected the amount of the penalty and failed or refused to remit it to the treasurer of the county committee, and the producer is not con-  
vinced in such failure or refusal, there is no ground for withholding payments which may be or become due to the producer from whom the buyer collected the penalty. In the type of case last mentioned, the county committee should secure from the producer a copy of the receipt issued by the buyer for the amount of the penalty collected and a statement signed by the producer showing the facts in regard to the collection of the penalty.

3. Producers failing or refusing to remit a penalty to the treasurer of the county committee.

The liability of a producer to remit the penalty, as distinguished from the liability of the buyer to collect and remit the penalty, will generally arise under the following circumstances:

- (a) a white marketing card was erroneously issued to a producer;
- (b) a white marketing card was issued to a producer who secured the payment of the estimated penalty by filing a bond of indemnity on form Cotton 215 with the county committee;
- (c) a white marketing card was issued to a producer who secured the payment of the estimated penalty by depositing funds to be held in escrow by the county committee;
- (d) a white marketing card was issued to a producer with respect to a farm on which it was estimated by the county committee that the total production would not exceed 1,000 pounds of lint cotton;
- (e) a white marketing card was issued to a producer with respect to a farm on which it was estimated by the county committee that the total production of cotton on the acreage planted to cotton would not exceed the normal production of the cotton acreage allotment;



- (f) cotton produced in excess of the farm marketing quota was identified when marketed by a white marketing card issued with respect to another farm and was purchased in good faith by a buyer who had no knowledge of the misuse of the card; or
- (g) cotton produced in excess of the farm marketing quota was delivered in payment of a standing or fixed rental or other charge for land and the producer and transferee did not agree, as provided in section 505 (a) of the regulations, that the penalty should be collected and remitted by the transferee.

Where the circumstances are such as are referred to in this item 3, the procedure outlined in item 2 above is inapplicable and a demand for the amount of the unpaid penalty must be made on the producer rather than on the buyer. The demand should be made in writing and forwarded, together with a copy of the Act, or a copy of the pertinent sections thereof, and the regulations, by registered mail (return receipt requested) to the producer. After the demand has been forwarded to the producer, a member of the county committee should call on the producer and endeavor to discuss with him the applicable provisions of the Act and regulations with a view to obtaining the payment of the penalty.

Where the facts in (a) above are found to exist, the letter from the county committee to the producer should explain that the issuance of a white marketing card does not in and of itself relieve the producer of his liability for the penalty imposed by section 348 of the Act if cotton is marketed in excess of the farm marketing quota, and that section 372 (b) of the Act provides that the person liable for the penalty under the facts in his case shall remit the penalty in accordance with the regulations. The letter should also point out that the regulations, in sections 505 and 506, provide that the penalty is due at the time the cotton is marketed and must be remitted to the treasurer of the county committee not later than thirty calendar days thereafter.

Where the facts in (b), (c), and (e) above are found to exist, that is, a bond of indemnity was filed or an insufficient amount of funds were deposited to be held in escrow to secure payment of the penalty, or the production of the planted acres exceeded the normal production of the cotton acreage allotment, the producer should be notified that the issuance of a white marketing card pursuant to section 402 (d) of the regulations was upon the condition that the producer shall nevertheless be subject to the penalty provided in section 348 of the Act and that, pursuant to section 372 (b) of the Act and section 507 (d) of the regulations, the amount of the penalty is due and payable. If the producer who filed a bond of indemnity does not remit the penalty promptly, the sureties under the bond of indemnity should be notified by registered mail (return receipt requested) that the producer has not paid the penalty incurred after being duly requested to do so and the sureties should be requested to remit forthwith to the treasurer of the county committee the amount of the penalty incurred.

Where the facts under (d) above are found to exist, the letter from the county committee should explain to the producer that the exemption provided in section 346 (b) of the Act is not applicable if the production of the acreage planted to cotton on the farm in 1938 is in excess of 1,000 pounds and that, pursuant to section 402 (e) of the regulations, the white marketing card was issued upon the condition that the producer shall nevertheless be



subject to the penalty provided in section 348 of the Act if the total production of the farm in 1938 exceeded 1,000 pounds of lint cotton. The letter should also state the amount of cotton reported to have been produced in 1938 on the farm, the reported actual average yield per acre of lint cotton in 1938, the normal yield per acre of lint cotton established for the farm for 1938, the amount of his farm marketing quota (the actual or normal yield per acre, whichever is the greater, times the cotton acreage allotment, plus any cotton carried over from a previous crop), and the amount of the penalty incurred, determined at the rate of 2 cents per pound times the amount of cotton marketed in excess of the farm marketing quota.

Where the facts in (g) are found to exist, the letter from the county committee should direct the attention of the producer to sections 505, 506, and 603 (a) 4 of the regulations and explain to him that pursuant to section 372 (b) of the Act, the amount of the penalty incurred is due and payable. The letter should also direct the attention of the producer to the definition of the terms "barter" and "exchange" as used in section 801 of the regulations in defining the term "market".

The cases referred to in (f) above involve an improper use of the cotton marketing cards in an attempt to falsify the records in regard to the production of cotton or the production and marketing of cotton by a producer who is liable for the penalty provided in section 348 of the Act and would render the producers engaging in the transaction amenable to the statutes punishing frauds, attempts to defraud, or conspiracies to defraud the Government. When the county committee has reason to believe that one or more producers have engaged in a transaction of this kind, it is suggested that the county committee should discuss the matter with the producers involved and explain the circumstances to them in order that they may adjust the records and pay the penalties accordingly. If the producer liable for the penalty and a producer who joins him in an attempt to conceal the identity of the cotton could be shown that the yields for their respective farms do not conform to the yields obtained on similar farms in the community or that the yields reported for their farms are relatively disproportionate or that the yields reported for their farms do not conform to the estimates of production thereon which may have been made previously or other circumstances of which the county committee has knowledge, it would appear that the producers would be convinced that any attempt to evade the law or regulations would prove to be futile. Where violations of this kind have been attempted, the county committee should endeavor to establish the full facts in connection with each case by obtaining information in regard to the ginning and sale of all cotton from both farms in the form of statements from the producers and from the ginners and buyers of their cotton.

In addition to the foregoing suggestions, the producer in each case should be advised that, pursuant to sections 512 and 606 of the regulations, the county committee is under a duty to report any case where the producer is actually in default in order that proceedings under section 376 of the Act may be instituted specifically to enforce the provisions of the Act.

If the penalties are not remitted to the treasurer of the county committee, a report in triplicate should be prepared and the original and one copy thereof transmitted to the State office. The report should show the name and full mail address of the buyer and of each producer and



a full and particular description (in addition to the farm serial number) of the farm on which the cotton was produced, the date on which the cotton was marketed and the place at which the transaction occurred, if the county committee has knowledge of these facts, the amount of the penalty incurred and the amount thereof which was or was not paid. In addition, copies of all correspondence from the county committee to the producer and replies thereto and any statements made by the producer should accompany the report.

4. Operators failing or refusing to make a report on form Cotton 217.

The county committee should address a request for a report on form Cotton 217 to the operator and forward it to him by registered mail (return receipt requested) together with copies of the form, the Act, and the regulations. The request should direct the attention of the producer to section 373 (b) of the Act and to section 603 (b) of the regulations and state further that, pursuant to section 606 of the regulations, the county committee is required to report any continued default on his part in this respect in order that proceedings may be instituted in accordance with section 376 of the Act specifically to enforce the provisions of the Act. The letter should also request a prompt reply and should offer to the operator any assistance which he may require in order to enable him to understand the use and execution of the operator's report. A member of the county committee should call on the operator and endeavor to discuss the matter with him with a view to obtaining the execution of form Cotton 217.

If the report is not made promptly, a full report in triplicate should be made and the original and one copy forwarded to the State office. The report should contain the name and full mail address of the operator and all facts and circumstances in the case and should be accompanied by copies of all correspondence from the county committee to the operator and any replies thereto.

Where a report is made to the State office under any of the circumstances discussed in items 1 through 4 above, the State committee, should communicate by registered mail (returned receipt requested) with the person in default and explain to him the circumstances as reported by the county committee. The letter should refer to the applicable sections of the Act and regulations and state the necessity of proceeding under section 376 of the Act unless the person complies with the provisions of the Act and regulations within a reasonable time (not less than five nor more than fifteen calendar days) fixed in the letter. A representative of the State committee should visit the person or persons named in the report wherever practicable. A copy of each report received from the county committee should be forwarded to this Division with a letter indicating the action taken by the State office.

If a compliance with the regulations and the Act results from the action taken by the State office, a report to that effect should be made to this Division. If the efforts of the State office are unsuccessful, a report to this effect should be made to this Division in order that an



investigation may be commenced with a view toward the institution of proceedings in the district courts of the United States to enforce specifically the provisions of the Act.

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